UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 2 1999

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Ms. Becky L. Jolin
Thompson and Knight
1200 San Jacinto Center
98 San Jacinto Boulevard
Austin, TX 78701

Dear Ms. Jolin:

This is in response to your letter of October 28, 1998. That letter requests interpretation of the PCB Disposal Amendments published June 29, 1998 (63 FR 35384) as they apply to PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff). We have reviewed your letter and our response is as follows.

1. Your letter requests an "Interpretation that PCB small capacitors have been removed from automobiles and appliances prior to shredding if the facility conscientiously implements a source control plan.".

The PCB Disposal Amendments defined a category of waste called "PCB bulk product waste" and created new options for its disposal. "PCB bulk product waste", as defined at 40 CFR 761.3, includes "PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances." The options for disposal of PCB bulk product waste are set out at 40 CFR 761.62. Those options include, for the disposal of "non-liquid PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff)", disposal in a facility permitted licensed, or registered by a State as a municipal or non-municipal non-hazardous waste landfill. (See 40 CFR 761.62(b)(1)(i).)

The Toxic Substances Control Act (TSCA), which provides the authority for the PCB Disposal Amendments, is a strict liability statute. Accordingly, a lack of intent to violate, and even a good faith effort to comply with, TSCA's requirements does not provide a defense to liability in the case of a violation. 15 U.S.C. §2614; In the Matter of Leonard Strandley, TSCA Appeal No. 89-4, 3 EAD 718, 722 (November 25, 1991). A source control program as described

by your letter cannot ensure that every capacitor is removed. Therefore, a metal recycling facility that relied on such a program, and that disposed of its shredder waste in accordance with §761.62(b)(1)(i), would be subject to enforcement action, including the assessment of civil penalties, for the capacitors that inevitably remained in the waste. A source control program (unless approved by EPA) is not a substitute for compliance with the PCB Disposal Amendments. Be aware that EPA will take good faith efforts to comply, including those beyond what is required by the regulations, into account when determining what type of enforcement action to take and, if called for, what amount of civil penalties to impose.

Performance-based disposal under §761.62(a), including incineration and chemical waste landfilling, and risk-based disposal under §761.62(c), are options for waste in which small capacitors have been shredded. If you wish, you may submit to EPA a request for an approval of a source control program as a risk-based disposal option under §761.62(c). The request should describe the source control program in detail, including the steps a facility would use to remove or verify removal of capacitors or other sources of PCBs; results of a pilot study verifying that the waste generated when the program is used does not pose an unreasonable risk to health or the environment, including underlying data; and a method for each facility relying on the program to identify itself to EPA and to identify the individual responsible for the facility's administration of and compliance with the source control program.

In April 1999, EPA met with representatives from the Institute of Scrap Recycling Industries, Inc. (ISRI) to discuss source control programs. We recommended that ISRI apply for a risk-based approval for such a program under §761.62(c). We suggested to ISRI that they could apply for a nation-wide approval under §761.62(c) as long as they specified the shredding facilities that would use the approval. This subject was also discussed in a letter to ISRI dated March 24, 1999 (see enclosed).

2. Your letter requests an interpretation of "Storage for Disposal" as it applies to shredder residue.

The PCB bulk product waste, including automobiles, appliances, and other sources of scrap metal, which is sent to the shredder is already designated for disposal when it arrives at the shredder, prior to shredding. Generation of shredder fluff does not change the disposal status of the PCB bulk product waste present in the fluff. Therefore, since you are receiving materials designated as waste, you must have a storage approval under §761.65 or a risk-based storage approval under §761.62(c). The storage for disposal requirements apply as soon as you receive the waste.

In our telephone conversation of October 25, 1999, you stated your view that shredding facilities are exempt from the storage requirements under §761.65 because the exception at §761.20(c)(2)(i) applies. This exception only applies to processing activities which are primarily associated with and facilitate storage or transportation, such as consolidating fluids from electrical equipment into larger containers. The activities described in your letter are considered activities that facilitate treatment or disposal (§761.20(c)(2)(ii)). You are still required to obtain a storage approval under §761.65 or §761.62(c).

We appreciate the metal recycling industry's attention to the issue of PCBs in its waste stream and its continuing concern for compliance with the PCB disposal requirements. If you have any further questions, please feel free to contact Laura Casey (202-260-1346) or Sara McGurk (202-260-1107).

Sincerely,

John W. Melone, Director
National Program Chemicals Division

Enclosure

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October 28, 1998

Via Telecopy 202/260-1724
Mr. Henry W. (Tony) Baney
7404
USEPA Headquarters
401 M Street, S.W.
Washington DC 20460

Re: Request for Interpretations of Provisions of the PCB Disposal Rule Applicable to Shredder Residue (PCB Bulk Product Waste)

Dear Mr. Baney:

We represent metal recycling companies that generate and/or process shredder residue from the mechanical shredding of automobiles, appliances, and other sources of scrap metal. As you know, this industry provides considerable environmental and economic benefits by recycling more than 15 million tons of ferrous and non-ferrous metals annually.[1]

This letter requests two interpretations related to the new PCB Mega Rule. First, we seek an interpretation of 40 C.F.R. section 761.62(b)(i), as applied to this industry, that PCB small capacitors shall be deemed removed from scrap automobiles and appliances if the facility conscientiously implements a source management plan to keep capacitors out of the shredder feed. Second, we seek an interpretation regarding what triggers "storage for disposal" of shredder residue relative to section 761.65. As these issues are of vital importance to metal processors, we seek your prompt and due consideration of these requests.

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[1] USEPA, OPTS, EED, and USEPA, OSW. "Project Summary—PCB, Lead and Cadmium Levels in Shredder Waste Materials: A Pilot Study" (EPA 560/5-90-008A) (April 1991) (hereinafter referred to as the "EPA Pilot Study"), p.2. In the EPA Pilot Study, EPA notes that the industry results in a two-thirds to three-fourths reduction in the volume of landfill space required to dispose of autos and appliances, substantial reductions in air pollution and energy consumption to recycle steel rather than produce it from ores, and a considerable economic contribution of the recycled metal (greater than $1.5 billion). *Id.*

1. Interpretation that PCB small capacitors have been removed from automobiles and appliances prior to shredding if the facility conscientiously implements a source control plan.

Whether PCB capacitors have been removed from shredder residue is the key to whether this material may be managed at a municipal or other non-hazardous landfill under section 761.62(b)(1)(i). That provision states as follows:

> (1) Any person may dispose of the following PCB bulk product waste in a facility permitted, licensed, or registered by a State as a municipal or non-municipal hazardous waste landfill:
>
> (i) Plastics (such as plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; or furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes or other similar coatings or sealants; caulking; Galbestos; non-liquid building demolition debris; ***or non-liquid PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff).***

Neither the preamble, nor the rule, nor the response to comments provides insight into how EPA and regulated entities will determinate whether PCB small capacitors have been removed from shredder feed. In talking with EPA staff, we obtained differing views: one, that it is an absolute test, and another, that EPA will accept source control as equivalent to removing all capacitors from shredder feed.

As EPA learned in its study on shredder residue, shredder facilities usually receive scrap cars already crushed and appliances (white goods) already bundled, making inspection a practical impossibility at this point in the recycling process. The scrap yards/recyclers that initially receive the scrapped automobiles and appliances are the entities who have the responsibility and opportunity to remove PCB capacitors and other PCB articles from the scrap stream. The State of Texas recognizes this responsibility, making it a crime to deliver PCB-containing capacitors to a metals recycling facility.[2] Thus, shredders have to rely on the compliance of scrap dealers with

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[2] Sec. 2 (a) A person may not sell, convey, or otherwise transfer to a metals recycling activity any of the following that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:
(1) a motor vehicle;
(2) a motor vehicle that has been junked, flattened, dismantled, or changed so

State and federal law and on source control to keep PCB small capacitors and other PCB articles from the scrap stream. Source control typically includes implementing a source control plan specifying that vendors deliver scrap metal that is free of PCB articles (as well as other unwanted items), obtaining agreements from scrap vendors to comply with the source control plan, and performing periodic checks of incoming scrap to ensure that the scrap meets the facility's specifications.

Source control is a common industry practice. Thus, the shredder residue that EPA tested as part of its study (which data was used to support the PCB bulk product waste disposal provision) was most likely derived from scrap procured under similar source control programs.[3] Thus, we believe it is reasonable for EPA to deem that source control programs satisfy the standard in subsection 761.62(b)(1)(i) of "non-liquid PCB bulk product waste from the shredding of automobiles or household appliances from which PCB small capacitors have been removed (shredder fluff)." **We ask that EPA issue an interpretation that implementation of a source control program to keep PCB small capacitors out of the scrap stream constitutes removal of PCB small capacitors from the scrap stream.**

This guidance should clarify that the language of section 761.62(b)(1)(i) does not set forth an absolute test. Accepting source control is a rational, necessary approach, given the volumes of scrap materials processed daily and the fact that shredder facilities receiving crushed cars and bundled appliances are not in a position to remove capacitors at that stage of the scrap recycling process. Source control provides an acceptable measure of assurance, considering the nature of the industry, the extremely large volumes of materials, and the risk posed by this material.

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that it has lost its character as a motor vehicle;
(3) an appliance; or
(4) any other item of scrap, used, or obsolete metal.
. . . .
Sec. 5 A person who violates this article is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $1,000, by confinement in the county jail for not more than 60 days, or by both fine and confinement.

TEX. REV. CIV. STAT. ANN. Art. 9009b §§ 2(a), (5).

[3] EPA Pilot Study. This document is silent with respect to whether all capacitors had been removed from the automobiles, white goods, and mixed inputs that were shredded for the study or from the stored fluff that was included in the study.

2. **"Storage for Disposal" of Shredder Residue**

It is our understanding that the storage requirements in section 761.65 apply when shredder residue is placed into "storage for disposal." We request guidance regarding the point in time at which shredder residue is considered to be placed into "storage for disposal." The processing of shredder residue includes various techniques for separating metals from the fluff, such as cyclones, magnets, eddy currents, and water flotation processes. The separation processes are followed by accumulation, dewatering, and materials management (staging the material for disposal). We believe that these activities constitute processing for disposal. Once these processes are complete, the material is typically transported for disposal within one to three days. **We ask for an interpretation that shredder residue managed in this manner is never "stored for disposal" and, thus, is not subject to section 761.65.**

This request is supported by the following facts. First, it is impracticable to implement the provisions of section 761.65 due to the huge volumes of shredder residue that are often generated. It is not possible to "cover" or "containerize" the *hundreds of tons* of shredder residue that may pass through a single plant on a daily basis. Larger facilities can produce 200-500 tons of shredder residue per day. Second, the storm water run-on and runoff controls in section 761.65(c)(9) are unnecessary, given (a) the low leachability of shredder residue[4] and (b) that EPA already regulates storm water discharges from shredder residue and permits such discharges under the NPDES Multi-Sector General Permit for Storm Water Discharges from Industrial Activity.[5] Third, the low leachability of this material, together with the minimal time the material is managed on-site, as described above, reduce the already minimal risks. Fourth, the cost of constructing buildings to provide cover and constructing run-on and runoff controls for the volumes of materials managed daily would be prohibitive. Accordingly, shredder residue managed as described in the preceding paragraph should not be deemed "stored for disposal."

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[4] *Id.* at 8, 12. In its study of shredder residue, EPA determined that in testing resembling "real world" conditions, only 0.0050% of the PCBs leached from shredder residue.

[5] EPA's National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for storm water discharges from industrial activities expressly authorizes storm water discharges from scrap metal recycling activities. *See* 60 Fed. Reg. 50804, 500952-56 (preamble), 51189-97 (special permit provisions). This permit authorizes storm water discharges from shredding activities, including runoff that has come in contact with shredder residue, but requires that facilities consider and describe measures and controls to minimize contact of storm water runoff with such materials. *Id.* at 51191.

Thank you for your due consideration of these requests. Please call if you have any questions.

Very truly yours,

Becky L. Jolin

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